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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,320	07/03/2003	Randal L. Shuman	4878-1	7351
22442	7590	12/21/2006	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/21/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,320	SHUMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Drew E. Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 October 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 33-41 and 44-52 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-32, 42 and 43 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>9/4/03</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of claims 1-32 and 42-43 in the reply filed on 10/12/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 33-41 and 44-52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group or species, there being no allowable generic or linking claim.

***Specification***

2. The abstract of the disclosure is objected to because it exceeds 150 words. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-32 and 42-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites "wherein said germicidal emitters are capable of withstanding a plurality of water sprays". It is not clear whether the "water sprays" are part of the claimed invention since they have not been positively recited.
6. Claim 2 recites "wherein the germicidal emitters are capable of withstanding water sprays approximately no more than 1,350 psig". It is not clear what pressure the emitters should be "capable of withstanding" since 1350 psi contradicts the minimum of 1400 psi found in parent claim 1.
7. Claim 3 recites "the water sprays are approximately 1,250 psig". It is not clear what pressure the sprays use since 1250 psi contradicts the minimum of 1400 psi found in parent claim 1.
8. Claim 4 recites "wherein the germicidal emitters are capable of withstanding water sprays approximately no more than 200°F". It is not clear what temperature the sprays use since 200°F contradicts the minimum of 210°F found in parent claim 1.
9. Claim 5 recites "the water sprays are approximately 195°F". It is not clear what temperature the sprays use since 195°F contradicts the minimum of 210°F found in parent claim 1.

#### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-5 and 15-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman [Pat. No. 5,597,597] in view of Harris [Pat. No. 4,776,267], and as evidenced by York [Pat. No. 6,675,437].

Newman teaches a device comprising a drum transport (Figure 10, #242), an entry conveyor (Figure 10, #246), an exit conveyor (Figure 10, #256), germicidal emitters (Figure 10, #18), replaceable spiral tumblers with recesses between them (Figure 9, #254), the drum having a decline (column 8, line 15), a motor and belt (column 8, line 9), the emitters radiating UVC radiation which was capable of surface sterilizing food at -40°F (column 5, line 28), a containment sleeve (Figure 10, #20), entry and exit shrouds (Figure 3, #116), the UVC radiation not affecting the food's surface temperature or eating characteristics, and a lack of chemicals and breakage. Phrases such as "said food product includes one of:" are merely preferred methods of using the claimed apparatus. Newman does not recite an assembly for moving some of the emitters, and the emitters being capable of withstanding water sprays of 1,400 psi and 210°F. Harris teaches device comprising UV emitters (Figure 2, #100) attached to a lid assembly (Figure 2, #80) which can be opened in order to provide cleaning and maintenance (column 3, lines 11-31). It would have been obvious to one of ordinary skill in the art to incorporate the lid assembly of Harris into the invention of Newman since both are directed to food sterilizing devices, since Newman already included emitters attached to the upper surface of the chamber (Figure 9, #18), and since the movable lid of Harris provided easier cleaning and maintenance (column 3, lines 11-31). It would have been obvious to one of ordinary skill in the art to make the device of Newman, in view of

Harris, capable of withstanding water sprays of 1,400 psi and 210°F since Newman and Harris were both directed to food treatment equipment, since food processing facilities were commonly cleaned with high pressure and temperature water sprays (also known as pressure washers), and since pressure washers were commonly used at these operating conditions as evidenced by York (column 7, line 3; column 22, line 64).

12. Claims 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman, in view of Harris, and as evidenced by York, as applied above, and further in view of Welt et al [Pat. No. 5,40,382].

Newman, Harris, and York teach the above mentioned components. Newman, Harris, and York do not recite a controller. Welt et al teach an irradiation device comprising a controller for product dwell time, product speed, the amount of radiation applied, the amount of product which enters and exits, as well as manual input and automatic settings (column 6, lines 15-20 & 58-61; column 9, line 51 to column 16, line 50). It would have been obvious to one of ordinary skill in the art to incorporate the controller of Welt et al into the invention of Newman, in view of Harris, since all are directed to irradiation devices, since Newman inherently required some sort of controller even though none was explicitly described, and since the controller of Welt et al would provided a reliable and accurate means for monitoring, tracking, and controlling the device Newman.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Alden [Pat. No. 5,223,290], Brandt et al [Pat. No. 6,132,784],

Koosman et al [Pat. No. 6,287,515], Kosofsky et al [Pat. No. 5,803,982], Martin [Pat. No. 4,697,464], Mueller [Pat. No. 5,740,968], Pedersen [Pat. No. 4,732,172], Sauer [Pat. No. 3,593,728], Norbury [Pat. No. 4,993,538], Kasting Jr et al [Pat. No. 6,455,017], Lynn [Pat. No. 7,086,407], Branz et al [Pat. No. 5,442,997], and Williams [Re. 35,259] teach germicidal devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
DREW BECKER  
PRIMARY EXAMINER  
12/19/06